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MAINE STATE SUPPLY

No. 53

In the Supreme Court of the United States

October Term, 1939

THE UNITED STATES OF AMERICA, APPELLANT

v.
MAINE KERRY, ALIAS MAINE KERRY, ALIAS
MAINE KERRY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF NEW JERSEY

STATEMENT AS TO JURISDICTION

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**In the United States District Court for
the District of New Jersey**

No. 8903b

UNITED STATES OF AMERICA

v.

MARIE KENNY, ALIAS MARIE RICKERT, ALIAS MAE
KELLY, DEFENDANT

STATEMENT OF JURISDICTION

(Filed March 20, 1940)

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause:

A. The statutory jurisdiction of the Supreme Court to review by direct appeal the judgment complained of is conferred by Title 18, Section 682 of the United States Code, otherwise known as the "Criminal Appeals Act," and by Section 345, Title 28, of the United States Code.

B. The statute of the United States, the construction of which is involved herein, is the Per-

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jury Statute Criminal Code, Section 125; U. S. C., Title 18, Section 231). This statute provides:

Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than \$2,000 and imprisoned not more than five years.

C. The judgment of the District Court sought to be reviewed was entered on February 20, 1940, and the petition for appeal was filed on March 20, 1940, and is presented to the District Court herewith, to wit, on the 20th day of March 1940.

The indictment in this case contains a single count and is based upon the Perjury Statute, quoted *supra*. It charged that the defendant, having first taken an oath before a grand jury, swore falsely that she had not made certain statements to Government agents, the fact of such statements having been made being material to the inquiry conducted by the grand jury. Among the statements which the indictment alleged that the defendant made to the Government agents and which before the grand jury she denied making were that she had gone to one Ray Born for permission to

open a house of prostitution in Atlantic City, New Jersey, and that she operated such a house after speaking to Born in 1935.

The defendant filed a motion to quash the indictment upon the ground that it did not charge an offense against the United States. This motion was sustained by the District Court. The memorandum opinion of the court rendered on February 15, 1940, appended hereto, states that the indictment did not charge an offense under the Perjury Statute for the same reasons as were set forth in its opinion filed in the companion case of *United States v. May Harris, alias Kitty Harris*, No. 8911b, in which the United States is likewise appealing.

D. Since the question involved in this case is the same as that presented in the *Harris* case, there is hereby incorporated by reference the pertinent portions of paragraphs C, D, and E of the Government's Statement of Jurisdiction in that case.

Respectfully submitted.

✓ FRANCIS BIDDLE,
Solicitor General.

JOHN J. QUINN,
United States Attorney.

✓ JOSEPH W. BURNS,
Special Assistant to the United States Attorney.

[Endorsed:] Filed March 20, 1940, at 1:30
o'clock p. m.

BENJAMIN F. HAVENS,
Clerk.

**In the United States District Court for
the District of New Jersey**

ON INDICTMENT 8903b

UNITED STATES OF AMERICA

v.

**MARIE KENNY, ALIAS MARIE RICKERT, ALIAS MAE
KELLY, DEFENDANT**

ON MOTION OF DEFENDANT TO QUASH

James Mercer Davis, for the Motion.

*John J. Quinn (United States Attorney) by
Joseph W. Burns (Special Assistant United States
Attorney), opposed.*

MEMORANDUM

Avis, District Judge:

The motion here is to quash the indictment because it is alleged that it does not charge an offense against the United States.

The same conditions exist as in the case of *United States of America v. May Harris, alias Kitty Harris* (8911b), in which case I have this day filed a memorandum granting a motion to quash.

For the reasons stated in that memorandum, an order will be made quashing the indictment in the present case..

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